

### **REMARKS**

Claims 1-8 are pending. No new matter has been added by way of the present amendments. For instance, claims 1 and 2 have been amended for reasons of antecedent basis. Additionally, redundant dependencies in claims 6 and 7 have been removed. Lastly, claim 9 has been cancelled. Accordingly, no new matter has been added. Further, these amendments are non-narrowing in nature.

### **Information Disclosure Statement**

The Examiner has indicated that the Information Disclosure Statements filed on December 27, 2004 and March 28, 2005 fail to comply with the rules since a legible copy of each set of foreign patent document in each non-patent literature publication has not been provided. Applicants traverse and submit that all relevant references have been provided. However, Applicants hereby provide replacement copies of references from the March 28, 2005 IDS.

Also, Applicants submit the Examiner is incorrect that all references must be provided since some references were cited in the International Search Report. As such, it is the responsibility of the International Bureau to provide copies of these references. Moreover, U.S. equivalents (copies of which need not be submitted) were listed and described in the December 29, 2004 IDS. To reiterate, Applicants submit that European Patent No. 0 556 157 corresponds to United States Patent No. 5, 373, 013; European Patent No. 0 196 038 corresponds to United States Patent No. 4,652,580; European Patent No. 0 040 345 corresponds to United States Patent No. 4,532,341; European Patent No. 0 354 182 corresponds to United States Patent No.

4,940,721; European Patent No. 0 196 038 corresponds to United States Patent No. 4,652,580; European Patent No. 0 065 485 corresponds to United States Patent No. 5,266,585; WO98/47367 corresponds to United States Patent No. 6,306,850 and WO 96/16048 corresponds to United States Patent No. 5,846,397. As such, Applicants are not providing copies of these specific references. However, replacement copies for all other references listed on the December 27, 2004 IDS are provided.

Additionally, Applicants have provided the uninitialed versions of the forms listing these references so that the Examiner may initial the forms indicating that the references have been correctly considered.

#### **Issues Under 35 U.S.C. 101**

The Examiner has rejected claim 9 under 35 U.S.C. 101 asserting that the claimed recitation of the use, without any steps in the process is improper. Applicants traverse and submit that claim 9 has been cancelled. Accordingly, this rejection is moot. Reconsideration and withdrawal thereof are respectfully requested.

#### **Issues Under 35 U.S.C. 112, 2<sup>nd</sup> paragraph**

The Examiner has rejected claims 2, 6 and 7 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph for the reasons recited at page 3 of the outstanding Office Action. Applicants respectfully traverse.

The Examiner asserts that in claim 2, the recitation of "as azole compound II" is confusing and should be deleted. Applicants traverse and submit that the recitation of "as azole compound II" is an attempt to refer to the "at least one azole derivative II" of B) in claim 1.

Accordingly, claims 1 and 2 have been amended in order to provide clear antecedent basis in relation between these claims. Accordingly, this rejection is moot. Reconsideration and withdrawal thereof is respectfully requested.

The Examiner has also rejected claims 6 and 7 asserting that they are improperly dependent upon two claims, claims 1 and 6. (Applicants submit that this should recite claims 1 and 5). Regardless, Applicants have amended claims 6 and 7 to remove the redundant dependency upon claim 1, since claim 5, upon which these claims depend, is already dependent upon claim 1. Accordingly, this rejection is moot. Reconsideration and withdrawal thereof is respectfully requested.

**Allowable Subject Matter**

In the outstanding Office Action the Examiner has indicated that claims 1, 4, 5 and 8 are allowable. Moreover, Applicants submit that in view of the present submission, all currently pending claims, claims 1-8, are allowable. Accordingly, the Examiner is respectfully requested to withdraw all rejections and allow the present application.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Craig A. McRobbie (Reg. No. 42,874 ) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.


Application No. 10/519,214  
Amendment dated December 14, 2005  
Reply to Office Action of September 20, 2005

Docket No.: 5000-0110PUS1

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: December 14, 2005

Respectfully submitted,

f By  442874  
Scott L. Lowe  
Registration No.: 41,458  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorneys for Applicant

Attachments: Copies of references from IDS filed December 27, 2004 and copies of references from IDS filed March 28, 2005